



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 2

290 BROADWAY

NEW YORK, NEW YORK 10007-1866

November 29, 2017

VIA EMAIL

[See List of Addressees Attached]

RE: PDI Cash-out Settlement Offer  
New Cassel/Hicksville Groundwater Contamination Superfund Site, OU1

Dear Sir/Madam:

As you are aware, the Environmental Protection Agency ("EPA") has been working for quite some time to effectuate a settlement with your clients relating to the performance of a remedial design ("RD"), or aspects thereof, for operable unit 1 ("OU1") at the New Cassel/Hicksville Groundwater Contamination site ("Site"). Our last settlement offer sought the performance of the preliminary design investigation ("PDI"), which as you know is only a portion of the work required to be performed at OU1 of the Site. We were unable to obtain commitment from a sufficient number of parties to participate in the PDI. Because the PDI requires a joint effort amongst parties associated with three plumes (i.e., the three plume groups), it is essential that the work be performed, and the reports be submitted, in a coordinated and cohesive manner. Because the three plume groups have failed to coalesce and/or commit to perform the PDI, we have decided to once again attempt a settlement, this time altering our approach and offering all OU1 potentially liable parties an opportunity to "cash-out" in a settlement that would provide sufficient funds for EPA to perform the PDI work itself.<sup>1</sup>

The intent of this settlement would be to fund the PDI. This could occur in one of two ways: there could be a settlement in which your clients contribute a total of \$11,322,500 which is EPA's estimated cost of the PDI (including contractor costs, EPA costs, and indirect costs) of \$6,470,000, plus a premium of 75% to cover cost overruns and unforeseen developments. While EPA generally requires a 100% premium for cash-out settlements, because the work is defined in the PDI workplan, we are willing to recommend settlement for less than a 100% premium. In the alternative, a second approach could be that EPA would receive a payment of \$ 5,000,000.00, as an initial payment on the PDI, with a provision in the settlement for the future payment of the remainder of EPA's actual costs for the PDI in excess of the initial \$5,000,000. Any such additional costs would be periodically billed to your clients. With either arrangement, your clients would receive a covenant not to sue and contribution protection for the PDI only.

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<sup>1</sup> EPA understands that the identified OU1 parties are likely to assert that the identified parties related to OU2 are also responsible parties for a portion of OU1. If the OU2 RI, which is currently being conducted by the Army Corps of Engineers, identifies comingling between the OU1 and the OU2 plumes, we would anticipate that the parties responsible for the OU2 plume would ultimately contribute, in some manner, to the OU1 RD/RA, including this PDI. Similarly, if EPA identifies other parties, we would seek to include those parties in future response activities.

We believe, in the interest of all parties, that an allocation of the payment amount(s) among the parties to any such settlement should be determined among the settling parties. If, however, this does not prove to be possible, EPA could develop an allocation pursuant to the terms of the agreement that would then be binding upon the settling parties.

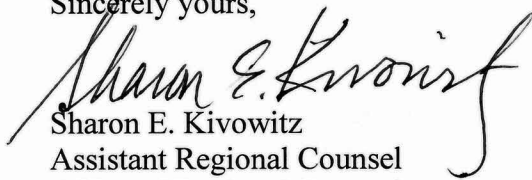
As you know, this PDI is the first step in a long process of RD/RA for this OU, and the Site as a whole, and there will be ample opportunity for a more comprehensive allocation among the parties as we move forward with the remedial action and future cost recovery efforts.

EPA expects to complete negotiations and have a signed settlement agreement in January. Please let me know on or before December 13, 2017 whether your clients are willing to commit to move forward with one of these two approaches. The settlement document would adhere closely to EPA's model Section 122(h) settlement agreement.

In addition, EPA is seeking your agreement to extend the tolling agreement for another six months, through June 30, 2018. Please have the attached third amendment to the tolling agreement dated and signed by a responsible official and returned to me by December 13, 2017.

Please call me if you have any questions.

Sincerely yours,

  
Sharon E. Kivowitz  
Assistant Regional Counsel  
Office of Regional Counsel

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